

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY, PA.

CIVIL DIVISION

* * *

CHRISTINE BIROS,) No. 4886 of 2017
)
 Plaintiff,)
)
 vs.)
)
U LOCK, INC.,)
)
 Defendant.)

* * *

HEARD: Friday, May 20, 2022

BEFORE: The Honorable Harry F. Smail, Jr., Judge

* * *

TRANSCRIPT OF MOTION TO AMEND THE RECORD
AND MOTION FOR SANCTIONS

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A P P E A R A N C E S:

On behalf of the Plaintiff:

WILLIAM E. OTTO, ESQ.

On behalf of the Defendant:

ALAN ROTH, ESQ.

1 FRIDAY, MAY 20, 2022 - 9:49 A.M.

2 P R O C E E D I N G S

3 * * *

4 THE COURT: Call the case of Christine Biros,
5 plaintiff, versus U Lock, Inc. as defendant. Case
6 number 4886 of 2017.

7 Will counsel please enter their appearance
8 for the record.

9 MR. OTTO: Your Honor, I'm William Otto
10 representing Christine Biros.

11 MR. ROTH: Alan Roth on behalf of U Lock.

12 THE COURT: Let's first talk. The Court is
13 indicating at this particular number, and the Court
14 notes that all appellate rights at this particular
15 number, 4886 of 2017, have been exhausted, that the
16 Court received from a nonparty who has no involvement in
17 the underlying Common Pleas case, nor the Superior Court
18 case, nor the allowance for appeal to the PA Supreme
19 Court case, nor the deferential treatment by the Supreme
20 Court of Pennsylvania for consideration of the Supreme
21 Court of the United States any interest at all filing a
22 notice of appeal at this number.

23 The Court did receive what is noticed as a
24 notice of appeal, but there's no standing.

25 Mr. Otto, if you'd like to address that.

1 MR. OTTO: Your Honor, my only comment is,
2 first of all, that under Rule 2329(3), you have the
3 discretion to deny any request for intervention. The
4 entry of appearance was filed using a form from family
5 court. Wasn't even the normal petition for leave to
6 intervene.

7 So, I see no reason why this shouldn't be
8 stricken from the docket.

9 THE COURT: Okay. Do you want to make any
10 comment on this Shanni Snyder notice of appeal?

11 MR. ROTH: No comments.

12 THE COURT: Do you stand opposed to the oral
13 motion to strike it from the docket?

14 MR. ROTH: I have no position on that.

15 THE COURT: That's fine. That's all I'm
16 asking. You don't have to take a position. You can
17 simply say no --

18 MR. ROTH: No position.

19 THE COURT: You're not involved in that.
20 Let's get back to Mr. Roth. I gave you a pretty
21 thorough set of instructions relative to the caption.
22 Did you do anything to correct it?

23 MR. ROTH: Yes, Your Honor. I brought it to
24 your office three days ago. I think it's waiting for
25 your signature to do what you asked to have done.

1 THE COURT: Let me see here. I got a notice
2 for bankruptcy. Then I got your response to the
3 objections, filed. I have a letter of May 18th from
4 Mr. Otto. So this is the U Lock motion to correct
5 and/or strike the erroneous caption, correct?

6 MR. ROTH: Yes.

7 THE COURT: Did you see that, Mr. Otto?

8 MR. OTTO: I did. Given, Your Honor, it
9 looks like it was filed yesterday in the Prothonotary's
10 office, it should have been done several weeks ago.

11 THE COURT: Right.

12 MR. ROTH: It was delivered to your office,
13 Your Honor, about three days ago. However, if I could
14 suggest to the Court --

15 THE COURT: My understanding is we were here,
16 I think, end of April.

17 MR. OTTO: 22nd of April, Your Honor.

18 THE COURT: 22nd of April. What took a
19 month?

20 MR. ROTH: Well, what it was, I was diagnosed
21 with cancer, and that cancer was very far along. That
22 interrupted everything I was doing. I was doing all
23 kinds of testing and things. That's why it took that
24 long to get it done.

25 THE COURT: Mr. Otto, did you get an

1 opportunity to review the Order of Court attached to his
2 motion and do you have any objection to it?

3 MR. OTTO: Your Honor, I just --

4 THE COURT: As far as the wording is all
5 I'm --

6 MR. OTTO: I saw that you have already
7 changed it on your order on the 13th. Based on that,
8 Your Honor, I didn't look at it any further.

9 With all due respect to Mr. Roth's action, I
10 think your order on the 13th of May takes care of the
11 issue.

12 THE COURT: I'll grant in part and deny in
13 part basically and refer to the order back to the May
14 13th *sui sponte* order that I issued.

15 MR. ROTH: Yes.

16 THE COURT: That issue is completed then. We
17 are here today. Mr. Otto, for the record's sake, would
18 you like to address your May 18th, 2022, correspondence
19 just so that we establish it on the record?

20 MR. OTTO: Yes. First of all, as Your Honor
21 is aware, there's been an involuntary Chapter 7
22 bankruptcy filing against U Lock. And under the federal
23 bankruptcy code, an automatic stay goes into effect.

24 So, the purpose of this presentation this
25 morning, Your Honor, I want to make very clear has

1 nothing to do with U Lock specifically. I'm not asking
2 for you to rule on anything related to U Lock
3 specifically.

4 But the motion that I submitted to you
5 previously for sanctions included request for sanctions
6 against both Mr. Roth as well as George and Cash Snyder.
7 I would like you to consider those.

8 Just to point out a couple of things related
9 to our previous hearing, Your Honor. At that hearing,
10 Mr. George Snyder agreed to provide information related
11 to old cars that were on the site. He agreed that he
12 would provide the name of the police officer that he
13 spoke to, as well as copies of various releases he
14 claims he had from car owners. That was to be delivered
15 on the Tuesday following the April 22nd hearing.

16 I have not received anything from either
17 Mr. Roth -- and I wouldn't expect to receive it directly
18 from Mr. Snyder, but I didn't receive anything from
19 Mr. Roth.

20 Second, Mr. Snyder said the taxes would be
21 paid on the property. They have not been paid. I don't
22 expect them to get paid now because that is an
23 obligation of U Lock, and it's certainly stayed by the
24 bankruptcy petition.

25 But I believe that goes to the fact that

1 there have been no commitments made by the principals of
2 U Lock which have been kept, and, of course, the last
3 item is the estate release. It had to be executed, and
4 that required your action. Otherwise, it wouldn't have
5 been done until the last couple of days.

6 With that in mind, if you look at the motion
7 that I filed or the information that I filed to
8 supplement your request, there is a summary that shows a
9 number of invoices for -- that came after or -- on or
10 after November 2019.

11 Mr. Roth made the point that he believes any
12 actions of his prior to the date of his bankruptcy
13 petition would have been discharged. Regardless of
14 whether that's right or not, a substantial amount of
15 what we have complained about took place after that
16 date.

17 You may not recall, Your Honor, but in
18 November we began hearings on his post-trial motions.
19 And subsequent to that he filed appeals in the Superior
20 Court and a Petition for Leave to Appeal to the Supreme
21 Court. And at every step, he again raised the issue of
22 my client's source of funds.

23 So I believe the motion is still relevant.
24 Even if you exclude the invoices for matters prior to
25 November, it still runs around 8 to \$9,000, which

1 whether that amount would be collectible is up in the
2 air, Your Honor. But at least --

3 THE COURT: Well, your motion suggests or
4 your supplemental -- I want to call it right. Your
5 evidence in support that was filed supports \$14,280, but
6 your request for sanctions is \$20,000.

7 MR. OTTO: Yes.

8 THE COURT: So we have \$5,720 that are not
9 established. Your request for that is for damages you
10 felt your client sustained because of the malfeasance or
11 behaviors on the other side of the case. I have to
12 consider what actual damages are.

13 And if you follow the precedent law, unless
14 there's some evidentiary presentation of actual damages
15 sustained as a result of even misuse of freedom of
16 speech to the defamatory effect of somebody's
17 reputation, you would have to represent or present
18 evidence in support of it, even if it's not the full
19 request, but enough to establish that I can take actions
20 on established damages.

21 Do you have that to present today?

22 MR. OTTO: May I speak with my client?

23 THE COURT: Sure.

24 (Indulgence)

25 MR. OTTO: Your Honor, I'm not sure we can

1 quantify anything. With that in mind . . .

2 THE COURT: That was a concern of mine,
3 obviously for the balance of the demand or request.

4 Because if there's not quantification, I'm precluded by
5 precedent law as to what remedies I can make available
6 within an Order of Court because I don't want to create
7 an automatic additional appellate issue.

8 MR. OTTO: I understand, Your Honor.

9 THE COURT: Mr. Roth, obviously at this point
10 in time there's a Chapter 7 bankruptcy that you served
11 me a notice on relative to U Lock, Inc. Now there's a
12 question of whether or not the sanctions can be imposed
13 upon George and Cash Snyder, joint and severally, that
14 are not necessarily protected by the bankruptcy
15 pleading.

16 So, do you want to respond to that?

17 MR. ROTH: Well, Your Honor, we believe that
18 the bankruptcy pleading stays all activity in this case,
19 because the case does involve U Lock, and we believe the
20 stay -- and I actually have a copy of the section that
21 grants the stay right here if you want to see that.

22 THE COURT: If you want to bring that up,
23 I'd be happy to. I want to touch base on one thing.
24 You gave me a Rule of Civil Procedure rule.

25 MR. OTTO: 2329(3).

1 THE COURT: That'll save my law clerk time to
2 look it up.

3 MR. ROTH: I believe that the automatic stay
4 stays all proceedings in this case because U Lock is an
5 active participant in the case. Therefore, we don't
6 believe that anything should be happening today with
7 regard to these issues.

8 Once the bankruptcy is resolved, then we can
9 come back and revisit these issues then if we need to do
10 that. And I believe that's how it should happen.

11 THE COURT: How does your bankruptcy
12 petition, though, in any way void my prior orders for
13 the receipt of deeds and possession of the property
14 since they were prior to the filing of the bankruptcy?

15 MR. ROTH: Well, first of all, we did not
16 file the bankruptcy. Shanni Snyder filed the
17 bankruptcy.

18 THE COURT: No. She filed a suggestion for
19 bankruptcy, and then apparently somebody received --
20 acknowledged it.

21 MR. ROTH: Well, what happened is --

22 THE COURT: My question is, how does she have
23 standing other than the liquidated damages to the labor
24 and wage case that she had in the federal court against
25 U Lock where she doubled her damages because of the

1 liquidation claim, which I'm aware of to suggest
2 bankruptcy based on those claims, but how does that
3 relate back to Shanni Snyder's claims as to the
4 property, the possession thereof and ownership that
5 we've already established after the exhaustion of appeal
6 back to Christine Biros?

7 MR. ROTH: Well, the bankruptcy -- the
8 bankruptcy is an involuntarily bankruptcy.

9 THE COURT: I understand that. But it's
10 filed by a nonparty.

11 MR. ROTH: Yes.

12 THE COURT: As to the relationship of this
13 case number Christine Biros versus U Lock, Inc., Shanni
14 Snyder's claims are based from a federal lawsuit under
15 labor and wage which was defaulted, which kicks in then
16 the automatic doubling of the damages and liquidated
17 damages which Judge Colville entered.

18 So, she has the suggestion of bankruptcy for
19 U Lock relative to that claim and what they have. But
20 if properties have already been deeded, transferred and
21 then are simply up for possession prior to that
22 bankruptcy being filed, which is the case here, what's
23 your position on that?

24 To be quite honest, you're asking us to stay
25 this automatically for related claims that have nothing

1 to do with Christine Biros, but they do relate to
2 U Lock, Incorporated.

3 MR. ROTH: Well, because of the automatic
4 stay, which you have in front of you, that stays all
5 proceedings against U Lock. It stays all proceedings.

6 THE COURT: Okay. And I'll grant you that.
7 Let's say it stays it from the date it was filed before
8 the U.S. Bankruptcy Court, which is April 28th, 2022. I
9 issued orders before that granting the deeds to
10 Christine Biros and the properties to her prior to the
11 bankruptcy. So the automatic stay doesn't protect that.

12 MR. ROTH: I'm not saying that it does. I
13 understand what you're saying.

14 THE COURT: So she can continue to move for
15 possession of her properties that she owns by deed,
16 because that's prior to the bankruptcy. That's not a
17 protected field under the automatic stay, because the
18 claim was made after the events that transpired and
19 after the exhaustion of the appeals through the state
20 system and your allowance for consideration to enter
21 into the federal system. And you didn't do it.

22 MR. ROTH: I believe that the stay covers any
23 of these proceedings today. I believe that that's what
24 the stay does.

25 THE COURT: But you don't have an Order of

1 Court that tells me it does. You just have the U.S.
2 Code Title 11 Subsection 362. But that doesn't stay
3 prior events before the date of the bankruptcy
4 proceeding. Or the filing thereof.

5 MR. ROTH: It stays all actions against
6 U Lock.

7 THE COURT: Those actions are done. That's
8 what I'm trying to say. They are not proceedings that
9 are going on. She already has the ownership of the
10 property. So therefore -- and by right, it's her
11 property. Now she can remove off anybody that she sees
12 as a squatter on her property by eviction, because
13 that's -- it's prior to the bankruptcy, unless you have
14 some case that indicates to me this real property is at
15 issue.

16 But the real property isn't even at issue in
17 the bankruptcy because it's not even an asset on April
18 the 28th, 2022 at 4:53 p.m. when Shanni Snyder filed
19 this.

20 MR. ROTH: We still believe the stay applies.
21 If you disagree with that --

22 THE COURT: Well, if I disagree with that and
23 I enter an order to that effect, obviously you can have
24 it reviewed by the bankruptcy court judge, who then
25 could, under the supremacy clause, indicate to the state

1 court that an order issue suspending that possession.

2 But I think you're going to have to establish
3 with the Western District Bankruptcy Court a precedent
4 that indicates that or something statutorily that
5 applies under U.S. Code 11 Subsection 362 that is a
6 mandate that applies to a state enforcement of prior
7 conduct which is completed before the bankruptcy begins.

8 That's the dilemma. It's the timing of when
9 the bankruptcy began. I think you would be correct here
10 if this thing started prior to my April -- I believe
11 22nd Order of Court. If it was prior to the April 22nd
12 Order of Court of 2022, then you would have standing to
13 say I'm automatically stayed. This came in six days
14 after that order went into effect.

15 MR. ROTH: I understand.

16 THE COURT: And you don't have an appellate
17 order by mandamus or king's bench that says I must stay
18 the allowance of the state action below because all the
19 appeals are exhausted.

20 MR. ROTH: I understand what you're saying.

21 THE COURT: Correct?

22 MR. ROTH: We still submit we should have the
23 protection.

24 THE COURT: I understand. Mr. Otto.

25 MR. OTTO: Your Honor, if you would issue

1 such an order, that would help us in the bankruptcy
2 court.

3 THE COURT: I think that's your third request
4 essentially is that the bankruptcy doesn't affect the
5 April 22nd, 2022, Order of Court for the deeds and
6 possession.

7 MR. OTTO: Right.

8 THE COURT: Okay. I think it does confound
9 you on the taxes. It does confound you on the vehicles.

10 MR. OTTO: That's the order related to Shanni
11 Snyder. Or the rule.

12 THE COURT: Anything further that you would
13 like on the record for today?

14 I'm going to take all this under advisement.
15 I am going to look into the bankruptcy U.S. Code Title
16 11 Subsection 362 to see if there's any binding by the
17 supremacy clause as to events that transpired before the
18 bankruptcy. Because that's the real issue. And if it
19 does bind me and I don't have the authority and/or
20 jurisdiction, then I'll agree with your automatic stay
21 and I'm done.

22 But if there's not, then I think that the
23 Court will find that the April 22nd, 2022, Order of
24 Court can still proceed because the bankruptcy came
25 afterwards.

1 MR. OTTO: Your Honor, there is a recent
2 change to the bankruptcy code. I'm not a bankruptcy
3 attorney, so I don't have the citation. But it relates
4 to stays or the impact of stays on expired leases.

5 The reason for the change was that when a
6 tenant's lease expired, a tenant would often file a
7 bankruptcy petition to delay their eviction process.

8 So, the change in the bankruptcy code provided that if
9 the lease has expired, then the automatic stay does not
10 apply to efforts to regain possession.

11 I don't know the extent to which that applies
12 in this situation, but it is certainly an analogous case
13 where the debtor or U Lock has no right to the property.

14 THE COURT: You would assume that the
15 eviction here would more or less mirror a landlord
16 tenant like lease?

17 MR. OTTO: Yes. That's my point, Your Honor.

18 MR. ROTH: I can tell the Court that I've
19 done hundreds of bankruptcies, and I don't believe that
20 what he's arguing is going to apply to this particular
21 case.

22 THE COURT: See, I would tend to agree with
23 you if it was within the time frame subsequent to the
24 filing of the bankruptcy.

25 MR. ROTH: I understand.

1 THE COURT: Then I think I'm bound
2 automatically. There's this question of six days before
3 I enter an order, because the appellate process or the
4 Commonwealth of Pennsylvania and then one allowance into
5 the federal statement wasn't utilized.

6 So the question is, does that escape the
7 automatic stay of the bankruptcy and is permissibly
8 permitted to proceed in the form of an eviction for
9 possession?

10 He's saying even after a bankruptcy is filed
11 under a landlord/tenant type lease expired, the
12 automatic stay doesn't apply. I'm concerned that it
13 applies even less to an event that transpired before the
14 bankruptcy than subsequent to. And that's our dilemma.

15 Would you prefer to have leave to brief this
16 particular issue from both sides and submit that?

17 MR. OTTO: Your Honor --

18 THE COURT: It wouldn't have to be anything
19 significant.

20 MR. OTTO: On one hand, I would love the
21 opportunity to do that. I'm also reluctant to cause my
22 client to have to spend more money to respond to
23 arguments which I believe are nonsense.

24 I have no problem, if Your Honor would like,
25 I can get the citation and any cases and provide them to

1 both you and Mr. Roth.

2 THE COURT: Instead of a brief, legal
3 memorandum that would be in the form of a letter that
4 can be exchanged between counsel.

5 MR. ROTH: I can do it that way.

6 THE COURT: Here's my issue: What I would
7 like to do is I would like to have it in short order. I
8 don't want this languishing. Could you have it by close
9 of business next Friday at 5 p.m.?

10 MR. OTTO: Yes, Your Honor.

11 THE COURT: That would give you all of next
12 week, five business days to get it together, but seven
13 days from today.

14 And it doesn't have to be in the form of a
15 brief or anything, just a legal memorandum by
16 correspondence of any citations you want me to look at
17 or review so that Caitlin, my law clerk, and I can look
18 at those items and consider your argument that the
19 automatic stay is imposed upon me.

20 I would consider Mr. Otto's position that it
21 is not imposed upon me and does not subject my
22 authority. Is that agreeable?

23 MR. ROTH: That's fine.

24 THE COURT: We'll allow you to do that. I'm
25 going to look at everything in the intervening time, and

1 then I'll defer ruling until after I receive the legal
2 memorandums. The earlier you get them to me, the
3 earlier I can issue orders.

4 But in reference to the Shanni Snyder case, I
5 am going to issue an order relative to that that is
6 permissible by Pennsylvania Rules of Civil Procedure if
7 I feel that it's my duty to do so.

8 MR. OTTO: Thank you, Your Honor.

9 MR. ROTH: Could I just add a little bit
10 about his request for sanctions and the amount?

11 THE COURT: Okay. Yes.

12 MR. ROTH: All right. I point out when
13 preliminary objections were filed by Mr. Otto, he filed
14 five or six issues in those preliminary objections. The
15 Court ruled on one of those.

16 Now they're making a claim and they're trying
17 to tack costs for all of this research on all of these
18 issues.

19 THE COURT: My question to you, Mr. Roth, is
20 why didn't you file a response to his motion that would
21 calculate down off of his billable time of \$14,280,
22 which I don't think should even be considered?

23 MR. ROTH: Well --

24 THE COURT: If that's your argument now,
25 obviously I don't have the time this morning because of

1 subsequent hearings that are coming up to go line by
2 line down to challenge his billable rate or his time.

3 MR. OTTO: Your Honor, with all due respect,
4 as I said earlier, and Mr. Roth isn't looking at it
5 obviously, but my summary, if you exclude the time prior
6 to November 19th, it takes out the preliminary
7 objections. From November 19 on was post-trial action.
8 There's a summary --

9 THE COURT: If you look --

10 MR. OTTO: Next page. A little forward. A
11 little more.

12 THE COURT: A.

13 MR. OTTO: And the dates are on the left-hand
14 column, Your Honor. So if you exclude, I think, the
15 first three lines, then you get to November, my November
16 invoices.

17 THE COURT: There's a \$1050 there.

18 MR. OTTO: The first couple were prior to the
19 November time frame.

20 THE COURT: I see.

21 MR. OTTO: So even if you take Mr. Roth's
22 argument about preliminary objections, that's excluded
23 from what I've said this morning.

24 THE COURT: I see. So there would be about,
25 looks like \$3,025. If you take those --

1 MR. OTTO: I believe it's around 8,000, Your
2 Honor. It's --

3 THE COURT: I'm just looking at the summary.
4 Oh, I see what you're seeing. The value of hours.

5 MR. OTTO: Right.

6 THE COURT: If you look at that, that's about
7 \$18,000.

8 MR. OTTO: Well, no. If you look at the
9 fourth date down, that's 11-2-2019. And then go across
10 all the way to the far right-hand corner and total those
11 three numbers. It's around \$10,000.

12 THE COURT: I see. Okay.

13 MR. OTTO: And that excludes, as Mr. Roth was
14 concerned about, my time for preliminary objections. In
15 fact, that excludes everything through trial.

16 THE COURT: Okay. I'm trying to follow you,
17 but your numbers aren't reconciling with my numbers.
18 Even if I take those four summation numbers to the far
19 right --

20 MR. OTTO: If you look on the far left
21 column, you see there's one billing for 11-7-2019. The
22 remaining three items are for billings after trial. If
23 you go to the far right hand, there's a number 205 plus
24 7,000 plus 1050. Those are the numbers I'm now asking
25 for sanctions for.

1 THE COURT: I see. Okay. So there's a
2 modification then from the 14,280, because those are not
3 the preliminary objections or, if you will, prediscovery
4 hours billed.

5 MR. OTTO: Yes. And that is -- while I don't
6 agree with Mr. Roth's summary as to the effectiveness of
7 his bankruptcy filing, those three numbers there are
8 post his petition filing and are not discharged.
9 Whatever his theory is.

10 THE COURT: I will -- and that will be from
11 11-7 of '19 to the conclusion of that summation.

12 MR. OTTO: Yes, Your Honor.

13 THE COURT: With that modification and
14 adjustment, Mr. Roth, it goes from the 14,280, then it
15 appears to be between 8 or 9,000 dollars for the claim
16 now.

17 Are you still saying there's something else
18 that should be shaved off of it?

19 MR. ROTH: I would like to say this: For the
20 amount of time he's claiming, he's claiming six or seven
21 times the amount of time that I spent on the appeal and
22 the post-trial motions. That just doesn't seem
23 realistic.

24 Appeal and post-trial motions take time. But
25 he's taking six or seven times what my time was, and I

1 don't think that's a fair analysis of the amount of time
2 that he really would have spent on those things.

3 THE COURT: I think that goes to the weight
4 that I would put into it by experience being on the
5 bench, by being a practicing solo attorney being in
6 private practice, as to whether that has reasonableness
7 or not.

8 So whatever weight and consideration I would
9 give it to a modification based upon your assertion that
10 it's unreasonable as far as his statement. Different
11 practices address different issues with different
12 insight and time.

13 I don't know how many times he had to meet
14 with his client to gain information. That would have
15 added to his response time. There's a lot of factors
16 that would have come into it. Is there a whole load of
17 research that you had to look into issues?

18 MR. OTTO: I had to not only read the cases
19 that he cited, I had to prepare my own brief.

20 Quite frankly, Your Honor, his brief was so
21 disjointed, I had to reorder the whole thing in order to
22 make sense of it for appellate purposes and for your
23 purposes.

24 THE COURT: Okay. I'll give it the weight
25 and credibility that I believe is reasonable and uses

1 common sense relative to that. Thank you very much.

2 Anything further from counsel?

3 MR. ROTH: Nothing, Your Honor.

4 THE COURT: All right. We're concluded and
5 adjourned. I'll be looking for legal memorandums by
6 5 o'clock next Friday.

7 MR. OTTO: Thank you very much, Your Honor.

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9 PROCEEDINGS ADJOURNED AT 10:25 A.M.

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C E R T I F I C A T E

* * *

I hereby certify that the proceedings are contained fully and accurately in the notes taken by me at the hearing of the within cause and that this copy is a true and correct transcript of the same.

Lori Lewandowski, RPR
Official Court Reporter

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